

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3588

IN THE MATTER OF:

Served November 30, 1990

Application of TRANSPORTATION)	Case No. AP-90-32
MANAGEMENT SERVICES, INC., for a)	
Certificate to Conduct Charter)	
Operations for the Account of)	
Mantua Citizens' Association, Inc.)	

By application filed August 6, 1990, Transportation Management Services, Inc. (TMSI or applicant), seeks a certificate of public convenience and necessity to transport passengers pursuant to contract with Mantua Citizens' Association, Inc. (MCA), in charter operations from the Mantua, Pine Ridge, Winterset, and Camelot subdivisions, Fairfax County, VA, to points in Washington, DC, and return.

Pursuant to Order No. 3539, served August 13, 1990, and incorporated herein by reference, a public hearing was held September 18, 1990. Three witnesses testified on applicant's behalf; a representative of Mantua Citizens' Association, Inc., testified in support of the application. The matter is uncontested.

SUMMARY OF EVIDENCE

TMSI's president, Mr. James J. McLary, testified regarding applicant's corporate structure and general operations. Mr. McLary has over 20 years experience in the transportation industry. His experience includes seven years as administrator of a bus system in Madison, WI, utilizing approximately 150 buses. He has been with TMSI, a wholly-owned subsidiary of Multi-Systems, Inc., since 1986. TMSI is a New York corporation having its headquarters in Alexandria, VA. Applicant performs passenger transportation for hire and related services. This work currently includes passenger service solely within Virginia, North Carolina, South Carolina, and Florida, some of which is pursuant to contract. In addition, TMSI holds WMATC Certificate No. 170 pursuant to which it conducts shuttle service for Scheduled Airline Traffic Offices, Inc. (SATO).

TMSI's contract with MCA requires that service be provided twice a day, excluding federal holidays, from the Mantua, Pine Ridge, Winterset, and Camelot subdivisions in Fairfax County, VA, to points in Washington, DC, and return. The contract requires TMSI to supply a minimum of two 20-passenger vehicles plus back-up. Under the contract MCA will determine routes and schedules and policies regarding the level and quality of service to be provided. The contract requires TMSI to provide vehicles, drivers, driver training, vehicle insurance and maintenance, fuel, and certain reports. In return for TMSI's service, MCA will pay \$275 per round trip operated. Applicant is

conducting the proposed service pursuant to the terms of a grant of temporary authority contained in Order No. 3547, served September 6, 1990. Thus, drivers, vehicles, insurance, and personnel (including supervisory) necessary to provide the service at issue in this case are in place.

At hearing Mr. McLary sponsored TMSI's statement of financial condition as of April 30, 1990. The statement shows current assets of \$473,762; fixed assets after allowance for depreciation of \$50,951; and other assets (deposits) of \$77,160. The statement shows current liabilities of \$424,925 (\$204,148 of which is payable to TMSI's parent company) and \$176,948 capital stock. TMSI's operating statement for the 12 months ended April 30, 1990, shows income of \$3,806,918, none of which is attributable to WMATC operations; operating expenses of \$3,593,269; and other expenses of \$86,507, including \$83,045 in management fees. TMSI projects, for the first 12 months of operations, revenue of \$137,500 (four trips a day for 250 days) and concomitant expenses of \$137,561.31. According to Mr. McLary, TMSI has been profitable over the last several years. The witness believes that applicant is in a position financially and operationally to provide the service that MCA requires. Mr. McLary testified that TMSI did not respond to MCA's request to bid on service one year ago because he believed applicant's resources were not sufficient to perform an additional contract adequately.

Under TMSI's operating structure, one individual is placed in charge of each contract. Although Mr. McLary is responsible for business development, budget adherence, and major decision-making, Mr. Irvin, who also testified, will be responsible for overall supervision of the contract operations at issue in this case. In addition, TMSI's general manager for Northern Virginia operations will be directly involved in applicant's initial operations for MCA's account. Two supervisors will make routine on-the-road inspections to assure that drivers are operating in a safe manner, on schedule, and properly attired. Other support staff in TMSI's office will be assigned to certain administrative and financial aspects of the proposed service. ^{1/} Mr. McLary is familiar with the Compact and the Commission's rules and regulations and intends to assure TMSI's compliance with them.

Mr. Thomas D. Irvin, currently transportation manager and consultant for TMSI, will be responsible for the day-to-day administration and supervision of the proposed service. This would include certain administrative tasks such as preparation of personnel and operations records. Mr. Irvin had eight years experience in the transportation field before coming to TMSI. As transportation manager at the University of Virginia's Department of Parking and Transportation, Mr. Irvin was responsible for fleet replacement,

^{1/} Mr. McLary testified that he has ultimate responsibility to assure that TMSI operates service required by contract. Mr. Eric Smith, general manager of TMSI's Northern Virginia operations, is responsible for "getting [MCA] service on the street."

long-range planning, labor relations, and hiring. Immediately before coming to TMSI, Mr. Irvin was safety director and one of two operations managers for Tourmobile Sightseeing. Tourmobile operates 34 vehicles and employs about 45 drivers and guides. Mr. Irvin was responsible for Tourmobile's safety and training programs including vehicle safety inspection and related record keeping, driver training, and company health programs. Mr. Irvin's experience has also included driving, scheduling, dispatch, rate design, and accident investigation. Mr. Irvin has similar responsibilities for service provided by TMSI for SATO.

The proposed service will require two drivers. TMSI plans to select drivers for the proposed service through a sharing mechanism employed with its other contract operations in Northern Virginia. Once selected, drivers will undergo training on the MCA "route" and regarding MCA contract requirements. Those drivers selected will be permanently assigned to the MCA service. Drivers are required to be appropriately licensed, pass the physical prescribed by the United States Department of Transportation, have good driving records, and be able to communicate in English. All drivers undergo a 90-day probation period during which they complete certain training and testing. Drivers are periodically evaluated as to driving technique and performance history. Three rear-engine transit buses, each having a manufacturer's designed seating capacity of between 29 and 33 passengers, will be ordered for the proposed service. Until these vehicles are delivered, applicant will use two 21-passenger vehicles and one 25-passenger vehicle already in TMSI's fleet. The vehicles will be garaged in Springfield, VA. Each driver is responsible for a pre-trip inspection of the vehicle he is to operate. Supervisors perform periodic inspection of vehicles, monitor drivers' daily pre-trip inspections, and ensure that TMSI's preventive maintenance program is followed. Mr. Irvin sponsored Exhibit No. 3, TMSI's current schedule of operations for MCA. According to Mr. Irvin, this schedule may be altered due to holidays, traffic patterns, and similar considerations. Mr. Irvin is familiar with the Commission's rules and regulations, including its safety regulations.

Mr. H. Gunther Loeser, treasurer-comptroller for Multi-Systems, Inc., testified regarding TMSI's general financial condition. Mr. Loeser is familiar with Exhibit No. 1, which he described as "a summary of the financial condition of the consolidation of Transportation Management Services' operations." ^{2/} In Mr. Loeser's opinion, TMSI has been a profitable entity for the last several years. Mr. Loeser testified that he has had occasion to review TMSI in terms of its ability to undertake new obligations such as the service at issue in this application. Based on this review, Mr. Loeser believes TMSI is financially able to undertake the provision of additional passenger transportation.

^{2/} The record indicates that such "consolidation" as may have occurred took place prior to applicant's WMATC operations.

Mr. David L. McIlwain, MCA's vice president and chairman of MCA's Bus Committee, testified in support of the application on MCA's behalf. Mr. McIlwain identified Exhibit No. 4 as the contract embodying the service at issue in this case. Mr. McIlwain testified that he witnessed MCA's president's signing of this contract. According to Mr. McIlwain, MCA "basically requires commuter service." Specifically, MCA requires passenger transportation from the subdivisions named in the application to various points in Washington, DC, and return, in vehicles having a manufacturer's designed seating capacity of approximately 30 passengers. MCA requires this service twice a day, with two incoming trips in the early morning and two returns in the afternoon. About 50 passengers would be transported round trip on the combined routes. The service is required Monday through Friday, except federal holidays. Last year, National Coach Works, Inc., provided this service for MCA. MCA now wants TMSI to provide service because NCW operates vehicles having a manufacturer's designed seating capacity in excess of 40 passengers. Mr. McIlwain is satisfied that TMSI is ready, willing, and able to provide this service. MCA is pleased with the service TMSI is currently performing under temporary authority. Average ridership during the period of temporary authority has been 43 passengers. MCA funds this transportation through fares and government subsidy, all of which are paid directly to MCA.

DISCUSSION AND CONCLUSIONS

In determining whether to grant a certificate of public convenience and necessity, the Commission is governed by the standards enunciated at Title II, Article XII, Section 4(b) of the Compact which provides:

. . . the Commission shall issue a certificate . . . if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing, and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity

Based on a review of the entire record in this case, the Commission finds applicant capable of providing the proposed service and willing to conform to the Compact and the rules, regulations, and requirements of the Commission thereunder.

Applicant is an experienced motor carrier. TMSI is currently providing MCA satisfactory service under temporary authority using vehicles consistent with contract requirements. If this application is granted, slightly larger vehicles will be used pursuant to MCA's request. TMSI's drivers are qualified and carefully monitored.

Arrangements have been made for garaging, inspecting, maintaining, and repairing vehicles. Applicant is financially healthy and fiscally capable of instituting service as proposed. In this regard, it is noted that TMSI has no long-term debt, and its current assets are sufficient to meet its current liabilities. TMSI projects a loss of \$61.31 from the proposed operations during the first 12 months. This will not affect its fiscal soundness and presumably brings some business benefit to applicant. No evidence controverts testimony adduced at hearing that applicant's administrators are familiar with the Compact and the Commission's rules and regulations, including its safety regulations, and intend to comply with them. Since standees are to be permitted, attention is directed to 49 C.F.R. §§ 393.90-393.91 (1989).

In determining whether applicant has satisfied its burden of proving that the public convenience and necessity require the proposed service, the Commission has relied on the test enunciated in Pan-American Bus Lines Operation (1 M.C.C. 190, 203 [1936]) and its progeny. The Pan-American test consists of three parts as follows:

. . . whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

This application seeks authority to serve a single account. Based on the testimony of the representative of that account, the Commission finds TMSI has proved that its service, as proposed, meets an expressed public need, thereby serving a useful public purpose. The testimony of MCA's representative shows that transportation of the type proposed by applicant is needed. According to MCA's representative, the carrier that provided this service previously operates vehicles larger than MCA currently wants to use. The record is devoid of any evidence to rebut this showing and attendant allegations. Thus, based on the record in this case, the Commission finds that the public need for the proposed service will not be served as well by existing carriers as it would be by applicant. The record further shows that the operations of existing carriers will not be impaired contrary to the public interest.

THEREFORE, IT IS ORDERED:

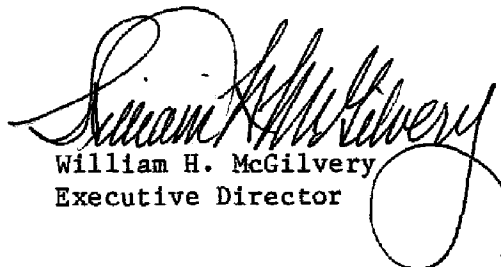
1. That Transportation Management Services, Inc., is hereby conditionally granted, contingent upon timely compliance with the terms of this order, authority to transport passengers in charter operations from the Mantua, Pine Ridge, Winterset, and Camelot subdivisions, Fairfax County, VA, to points in Washington, DC, and return, for the account of Mantua Citizens' Association, Inc., pursuant to contract executed August 1, 1990, and any continuous extensions thereto and amendments thereto, involving transportation of passengers as described above.

2. That Transportation Management Services, Inc., is hereby directed, within 30 days of the service date of this order, to have on file with the Commission the following: (a) three copies of its WMATC Tariff No. 2 consisting of its contract with Mantua Citizens' Association, Inc., as herein proposed, together with a tariff cover sheet pursuant to Commission Regulation No. 55; (b) an equipment list indicating make, year, model, serial number, vehicle number (if any), manufacturer's designed seating capacity (including driver), and license plate number (with jurisdiction) for each vehicle to be used in revenue operations; (c) evidence of ownership or a lease in accordance with Commission Regulation No. 69 for each vehicle to be used in revenue operations; (d) an affidavit of identification of vehicles pursuant to Commission Regulation No. 67, for which purpose WMATC No. 170 has been previously assigned, showing that all revenue vehicles have been appropriately identified; and (e) a certificate of insurance in accordance with Commission Regulation No. 62 and covering all revenue vehicles and operations.

3. That unless Transportation Management Services, Inc., complies with the requirements of the preceding paragraph within 30 days of the issuance of this order, or such additional time as the Commission may direct or allow, the grant of authority contained herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

4. That upon compliance with the conditions set forth in the preceding paragraphs, an amended certificate of public convenience and necessity will be issued to Transportation Management Services, Inc., in the form and as worded in the Appendix to this order.

BY THE DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


William H. McGilvery
Executive Director

NO. 170

TRANSPORTATION MANAGEMENT SERVICES, INC.

By Order Nos. 3534 and 3588 of the Washington Metropolitan Area Transit Commission issued July 31, 1990, and November 30, 1990, respectively;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order Nos. 3534 and 3588;

THEREFORE, IT IS ORDERED that the said carrier is hereby granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege herein granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES

- PART A -

CHARTER OPERATIONS, transporting passengers, together with their baggage in the same vehicles, between points in the Metropolitan District,

RESTRICTED (1) to transportation for the account of Scheduled Airline Traffic Offices, Inc., pursuant to contract executed April 18, 1990, and amended April 27, 1990, and any continuous extensions thereto or modifications thereto for transportation of passengers between Washington National Airport, Arlington County, VA, or Washington Dulles International Airport, Loudoun County, VA, on the one hand, and, on the other, points in the Metropolitan District; (2) to transportation in vehicles having a manufacturer's designed seating capacity of 12 passengers or less (including the driver); and (3) against transportation solely within the Commonwealth of Virginia.

- PART B -

CHARTER OPERATIONS, transporting passengers from the Mantua, Pine Ridge, Winterset, and Camelot subdivisions, Fairfax County, VA, to points in Washington, DC, and return, for the account of Mantua Citizens' Association, Inc., pursuant to contract executed August 1, 1990, and any continuous extensions thereto and amendments thereto involving transportation as described herein.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous, and adequate service to the public in pursuance of the authority granted herein, and that failure to do so shall constitute sufficient grounds for suspension, change, or revocation of the certificate.